2020 Title IX Regulations: Informal Resolution Facilitators Training

Jacqueline Litra, F3 Law
Housekeeping

- **Presentation Materials:** All slides will be emailed to registrants after training in a format you can post.

- **Technical Issues:** If you experience technical issues, please let us know in the chat.

- **Toolkit:** If you are interested in purchasing the toolkit, please reach out to communications@f3law.com following the session. All toolkits will be delivered electronically in 2 weeks.
Ask Questions
Initial Training Review

- Definition of Title IX sexual Harassment
- Scope of Education Program/Activity
What is Informal Resolution?

- Informal method to settle *formal* complaints of Title IX Sexual Harassment
- Can be offered
- Must be offered consistently
When Can Informal Resolution be Offered?

- *Can only* be used when formal complaint has been filed
- *Cannot* be used in cases of employee-on-student harassment
- *Can only* be used if each party has given informed, written consent (*cannot* ever be required, indirectly or directly)
Old Rules vs. New Rules

- Discouraged by OCR before
- Allowed in 2017 (but did not prohibit in cases involving employee sexual harassment of a student)
- Now allowed but only where formal complaint is filed and not in cases involving employee-on-student misconduct
WHY ALLOW INFORMAL RESOLUTION?
When is Informal Resolution Useful?

Underlying Facts are Uncontested
Robin’s Report

- Robin and Cameron are freshman.
- Cameron told Robin that another student, a senior, Parker, was sending Cameron inappropriate messages.
Robin’s Report

- Robin encouraged Cameron to report, but Cameron refused.

- Peyton, another student, and Robin were at a party last weekend. Peyton told Robin, Peyton also receiving inappropriate messages from Parker.
Robin’s Report

- Because this seemed like a pattern, Robin reported it.
- The messages began with requests for dates but evolved into name calling (slut, skank), rambling comments about “obvious” desire for Parker, and incessant requests for connection.
- Cameron and Peyton are not interested in filing a formal complaint.
POLLING

Your institution offers face-to-face restorative justice. Can this be done with Cameron?

- Yes, because the new Title IX regs now clearly allow informal resolution
- Yes, as long as the facilitator has been trained on Title IX
- No, because Cameron has not filed a formal complaint
- No, because sexual harassment cannot be addressed through informal resolution
Formal Complaint

- Written notice to all known parties
  - Grievance process
  - Allegations
  - Respondent presumed not responsible
  - Right to advisor
  - Right to inspect/review evidence
  - Notice of provision on false statements
  - Informal resolution process, if offered
Types of Informal Resolution

- Restorative Justice
- Mediation
- Consider: Face to Face?
Who Should Serve as an IRF?

- Trained Facilitator
- Neutral Party/Impartial/Unbiased
  - No conflicts of interest
- No prejudgment of case
- We do not recommend the IRF be involved in the investigation
Standard

- The Department declined to define “bias,” “conflict of interest,” “prejudge”
- The Department encourages application of an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists....
Conflict of Interest

- Flexibility to choose informal resolution facilitator
- Can use a school employee
- Can use an individual with a history of working in certain fields
- Caution against using generalizations to identify conflict of interest
Pre-Judgment

Tips for avoiding pre-judgment of facts:

- Each case is fact-specific
- Keep an open mind
- Listen to facts presented
- You are not an advocate for either party, even if you believe one is right
Sex Stereotypes

- Must not rely on sex stereotypes such as:
  - Women are “asking for it” based on actions or clothing
  - Men cannot be sexually assaulted
  - Women only decide they were assaulted after the fact due to regret or embarrassment
  - Men are more likely to be sexual aggressors

- Consider intersection of sex stereotypes with race, ability, sexuality, and gender identity
Title IX Coordinator signed the Formal Complaint and is acting as informal resolution facilitator.

Is that a conflict of interest?

☐ Yes
☐ No
You attend the same barre class as Parker. Is that a conflict of interest?

☐ Yes
☐ No
POLLING

You have a history of working as a victim advocate. Is that a conflict of interest?

☐ Yes
☐ No

POLLING

You are the ADA compliance officer. Is that a conflict of interest?

☐ Yes
☐ No
POLLING

You have had training on trauma informed interviewing practices. Does that create bias or the risk of pre-judgement?

☐ Yes
☐ No
**Required & Recommended Notices**

- Notice of allegations + existence of IR process
- Offer of informal resolution (with impacts of participation)
- Notice of end of informal resolution without agreement
- Notice of successful informal resolution
Notices – Informal Resolution

Informal Resolution Process

- Offer of Title IX Informal Resolution Process
- Notice of Closure of Title IX Informal Resolution Process
Notice of Impact of Participation in Informal Resolution Process

- Option to withdraw and return to investigation process before resolution
- Neither party can ask for investigation to resume after resolution
- Records will be maintained for 7 years
- Confidentiality and privacy implications
Can informal resolution facilitator be a witness in a later investigation?

Can facts be used in a later investigation?

Is the process confidential?
The Mediation Process

- Introductions
- Information Collection
- Problem Identification
- Brainstorming Solutions
- Brokering the Deal
- Agreement
Potential Trauma for CP and RP
Emotions

- Silence is ok
- Sympathy is ok (within reason/neutral) – “I can tell this is hard” “I’m sorry this is difficult”
- Allow breaks
- Remember equality not equity is goal for processes
Introductions
Critique an Introduction
POLLING

Critique a Mediation: Introduction Content

☐ Good
☐ Not Good
POLLING

Critique a Mediation: Delivery of Introduction

☐ Good
☐ Not Good
Brainstorming Solutions
Brainstorming Ideas

- Don’t shut down ideas
- Write down all ideas
- Suggest, but don’t advocate
- Discuss pros/cons and possibility of solution working
Brainstorming Ideas

- “What solution would allow you to feel comfortable settling the complaint?”
- “If the other party were to offer $x$, would you be willing to offer anything in return?”
- If a party refuses to make further offers, ask questions to understand why
What types of solutions might you brainstorm for Cameron, Peyton, and Parker?
Length of Informal Resolution

- Will vary depending on complexity
- 20 days is a reasonable time, but extensions will be warranted in many cases
- Try to obtain agreement to extensions from all parties
- Keep the Title IX Coordinator apprised of progress
Outcome of IR
Cameron and Parker reach an agreement in informal resolution. Can the Title IX process ever recommence?

- Yes, if Parker fails to comply with the terms
- Yes, but only for allegations not resolved in informal resolution
- No, because you can only recommence an investigation before a resolution is reached
Role of Institution If Agreement Reached

- Agreement is between the parties; institution is not a party
- IR Facilitator can:
  - Act as intermediary
  - Make suggestions, evaluations
  - Help with drafting document
Recordkeeping
QUESTIONS
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